

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

ALBERT R. GARCIA, JR.

Plaintiff,

vs.

NEVADA BOARD OF PAROLE  
 COMMISSIONERS, *et al.*,

Defendants.

3:06-cv-0118-JCM (VPC)

**REPORT AND RECOMMENDATION**  
**OF U.S. MAGISTRATE JUDGE**

February 5, 2008

This Report and Recommendation is made to the Honorable James C. Mahan, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. Before the court is defendants Williams and Jacobs's motion for partial summary judgment (#92). Plaintiff opposed (#102) and defendants replied (#116). The court has thoroughly reviewed the record and the motions and recommends that defendants' motion for partial summary judgement (#92) be granted.

**I. HISTORY & PROCEDURAL BACKGROUND**

Plaintiff Albert R. Garcia, Jr. ("plaintiff"), a *pro se* prisoner, is currently incarcerated in the custody of the Nevada Department of Corrections ("NDOC") at the Northern Nevada Correctional Center ("NNCC") (#67). Plaintiff brings his second amended complaint pursuant to 42 U.S.C. § 1983, alleging violations of his First, Fifth, Eighth, and Fourteenth Amendment rights. *Id.* Plaintiff names as defendants The Nevada Board of Parole Commissioners ("Parole Board"); Dorla Salling, Parole Board Chairman; John C. Morrow, Thomas D. Goodson, Connie Bisbee, Mary Vieth, and Michael Keeler, Parole Board Commissioners; Patricia M. McGaffin and Mary Stewart, NNCC Caseworkers; The NDOC Psychological Review Panel ("Psych Panel"); A.T. Vogt, Psychologist; James Baca, Nevada State Prison ("NSP") Associate Warden; Kenneth Corzine, Travis Neighbors, Edmond Mason, and Michael Thalman, NNCC Correctional Officers; Don Helling, NNCC Warden; James Benedetti, NNCC Associate Warden; Danielle Iratcable,

1 NNCC Caseworker; Rod Moore, NDOC Investigator; Jeffrey Wiley, NNCC Sergeant; James  
 2 Welch, NNCC Lieutenant; Daniel Henson and Paul Lessard, NNCC Correctional Officers; Mary  
 3 Babbs, NNCC Sergeant; Sean LaGier, NNCC Correctional Officer; William Curry, NNCC Law  
 4 Librarian; Ted D'Amico, NDOC Medical Director; Joanne Williams, Terri Jacobs, and John  
 5 Brown Pegry, NNCC Nurses; Michael Bashor, NNCC Correctional Officer; Sergeant Wagner and  
 6 G. Moore, NNCC Sergeants; Damon Haycock, NNCC Administrative Officer; and Does 1-10.  
 7 *Id.*

8 Defendants' motion for partial summary judgment pertains only to count XI (#92). In  
 9 count XI, plaintiff alleges that defendants Williams and Jacobs violated his Eighth Amendment  
 10 rights by acting with deliberate indifference to his complaints about pain that occurred after  
 11 kidney dialysis treatments (#67, pp. 14-14(b)).<sup>1</sup>

12 The Court notes that the plaintiff is proceeding *pro se*. "In civil rights cases where the  
 13 plaintiff appears *pro se*, the court must construe the pleadings liberally and must afford plaintiff  
 14 the benefit of any doubt." *Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 623 (9th  
 15 Cir. 1988); *see also Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

## 16 II. DISCUSSION & ANALYSIS

### 17 A. Discussion

#### 18 1. Summary Judgment Standard

19 Summary judgment allows courts to avoid unnecessary trials where no material factual  
 20 disputes exist. *Northwest Motorcycle Ass'n v. U.S. Dept. of Agriculture*, 18 F.3d 1468, 1471 (9th  
 21 Cir. 1994). The court grants summary judgment if no genuine issues of material fact remain in  
 22 dispute and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). In  
 23 deciding whether to grant summary judgment, the court must view all evidence and any  
 24 inferences arising from the evidence in the light most favorable to the nonmoving party. *Bagdadi*  
 25 *v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996). In inmate cases, the courts must

26 [d]istinguish between evidence of disputed facts and disputed

---

27 <sup>1</sup> The court utilizes plaintiff's page numbering when referencing his second amended complaint.

1 matters of professional judgment. In respect to the latter, our  
2 inferences must accord deference to the views of prison  
3 authorities. Unless a prisoner can point to sufficient evidence  
4 regarding such issues of judgment to allow him to prevail on the  
5 merits, he cannot prevail at the summary judgment stage.

6 *Beard v. Banks*, 126 S.Ct. 2572, 2576 (2006). Where reasonable minds could differ on the  
7 material facts at issue, summary judgment should not be granted. *Anderson v. Liberty Lobby,*  
8 *Inc.*, 477 U.S. 242, 251 (1986).

9 The moving party bears the burden of informing the court of the basis for its motion, and  
10 submitting evidence which demonstrates the absence of any genuine issue of material fact.  
11 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party has met its burden,  
12 the party opposing the motion may not rest upon mere allegations or denials in the pleadings but  
13 must set forth specific facts showing that there exists a genuine issue for trial. *Anderson*, 477  
14 U.S. at 248. Rule 56(c) mandates the entry of summary judgment, after adequate time for  
15 discovery, against a party who fails to make a showing sufficient to establish the existence of an  
16 element essential to that party's case, and on which that party will bear the burden of proof at  
17 trial. *Celotex*, 477 U.S. at 322-23.

#### 18 **B. Analysis**

19 Defendants argue that plaintiff's count XI contains identical allegations as contained in  
20 plaintiff's count III (#92). Defendants also address plaintiff's claims on their merits. *Id.* Plaintiff  
21 responds only to defendants' arguments as pertaining to the merits of his claim (#102).

22 The court reviewed and compared counts III and XI, and agrees that the two claims  
23 contain identical allegations. *Compare* #67, pp. 6(c)-6(d), *with* #67, pp. 14-14(b). The court will  
24 address these allegations within the purview of count III, which is the subject of a separate motion  
25 for partial summary judgment. *See* #89. Thus, the court grants defendants' motion for summary  
26 judgment as to count XI.

27 ///

///

///

///

### III. CONCLUSION

Based on the foregoing and for good cause appearing, the court concludes that count XI contains allegations identical to count III. As such, the court recommends defendants' motion for partial summary judgement (#92) be **GRANTED**.

The parties are advised:

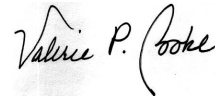
1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of Practice, the parties may file specific written objections to this report and recommendation within ten days of receipt. These objections should be entitled "Objections to Magistrate Judge's Report and Recommendation" and should be accompanied by points and authorities for consideration by the District Court.

2. This report and recommendation is not an appealable order and any notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's judgment.

### IV. RECOMMENDATION

**IT IS THEREFORE RECOMMENDED** that defendants' motion for partial summary judgement (#92) be **GRANTED**.

**DATED:** February 5, 2008.



**UNITED STATES MAGISTRATE JUDGE**